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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,130	08/06/2003	Klaus B.W. Blume	60,130-1829 (00MRA373,382)	8416
26096	7590	05/16/2006	EXAMINER	
CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009			STRIMBU, GREGORY J	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/635,130  
Filing Date: August 06, 2003  
Appellant(s): BLUME ET AL.

**MAILED**

MAY 16 2006

**GROUP 3600**

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Kerrie A. Laba  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed February 23, 2006 appealing from the Office action mailed July 13, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 21, 24-26, 28, 29, 41, and 42 are rejected.

Claim 27 is allowed.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

**NEW GROUND(S) OF REJECTION**

Claims 21, 24-26, 28, 29, 41, and 42 are rejected under 35 USC 103(a) as being unpatentable over Saito (6,185,873).

### **WITHDRAWN REJECTIONS**

The 35 U.S.C. 103(a) rejection of claims 24-29 and 41 as being unpatentable over Saito (6,185,873) in view of Ross (1,986,981) has not presented for review on appeal because it has been withdrawn by the examiner.

### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

### **(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 112***

Claim 42 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "to hold" on line 2 of claim 42 renders the claim indefinite because it is unclear how the housing or the power mechanism cannot be held and at the same time be secured to the door panel during assembly. Note that step (C) in claim 21 requires both the window regulator housing and the power mechanism be secured to the vehicle door panel. Therefore, the other one of the window regulator housing and

power mechanism must be held in place relative to the one of the window regulator housing and power mechanism since they are both secured to the vehicle door panel.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21, 24-26, 28, 29, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito (6,185,873). Saito discloses a window a window lifting mechanism attached to a vehicle door panel 5 having a first alignment member (not numbered, but comprising the outside surface of 5a) formed on the vehicle door panel on one side of the vehicle door panel and a second alignment member (not numbered, but comprising the inside surface of 5a) formed on the vehicle door panel on an opposite side of the vehicle door panel, a window regulator housing 8 is aligned relative to the door panel via the first alignment member, a power mechanism 7 is aligned relative to the door panel via the second alignment member and the window regulator housing and power mechanism are secured to the door panel, a single contiguous feature 5a on the vehicle door panel defines both the first and second alignment members, the single contiguous feature comprises a projection on one of the one side or the opposite side of the vehicle door panel, and comprises a recess on the other of the one side or the opposite side of the vehicle door panel wherein one of the first

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alignment member and second alignment member comprises the projection and the other of the first alignment member and second alignment member comprises the recess, a first corresponding alignment member (not numbered, but comprising the flange through which the bolt 11a extends) on the window regulator housing to cooperate with one of the projection and recess and a second corresponding alignment member 14e on the power mechanism to cooperate with the other of the projection and recess, a fixing hole 5b in at least one of the first alignment member and the second alignment member for securing one of the window regulator housing and the power mechanism to the vehicle door panel in which the fixing hole is contiguous with the single contiguous feature.

Although Saito is silent concerning the particular method steps of assembling the mechanism, the assembly of the window lifting mechanism, as taught by Saito, would inherently lead to the claimed method steps as recited in claims 21, 24-26, 28, 29, 41, and 42.

#### **(10) Response to Argument**

A. Rejection of claim 42 under 35 USC 112, second paragraph rejection

The recitation "to hold" on line 2 of claim 42 is indefinite under 35 USC 112, second paragraph. Claim 21, from which claim 42 depends, recites that the window regulator housing and the power mechanism are secured to the vehicle door panel in step (c). Since the window regulator housing and the power mechanism are secured to the vehicle door panel, they are both held relative to the vehicle door panel. However,

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claim 42 contradicts the language of claim 21 by requiring one of the window regulator housing and the power mechanism to not be held relative to the other one of the window regulator housing. Clearly, both the window regulator housing and the power mechanism are held relative to one another because they are both held relative to the vehicle door panel as required by step (c) in claim 21. Accordingly, claim 42 is indefinite under 35 USC 112, second paragraph.

B. Rejection of claims 21 and 42 under 35 USC 103(a)

Claims 21 and 42 are properly rejected under 35 USC 103(a) as being anticipated by Saito. The Appellant argues that the first 5b, 11a and second 5c alignment members of Saito are not formed on opposite sides of the door panel 5. This argument is untenable because the requirement that the first and second alignment members be formed on the vehicle door panel is recited in the preamble of the claim 21. Because the body of claim 21 fully and intrinsically sets forth all of the limitations of the claimed invention, the preamble is not considered to be a limitation. In other words, how the first and second alignment members are formed makes no manipulative difference to how the window regulator housing and the power mechanism are aligned to the vehicle door panel. Even if the limitation of the first and second alignment members were required to be formed on the vehicle door panel, Saito discloses the appellant's claimed invention. The alignment members 5b and 5c are clearly formed on opposite sides of the vehicle door panel 5 since each of the alignment members extends through the vehicle door panel from one side of the vehicle door panel to the

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other side of the vehicle door panel. Therefore, the first alignment member 5b could be formed from the upper side of the vehicle door panel, as shown in figure 5, while the second alignment member 5c could be formed from the lower side of the vehicle door panel, as shown in figure 5, or *vice versa*. Claim 21 does not require the alignment members be formed on only one side of the vehicle door panel as implied by the Appellant's argument. The Appellant further argues that the second alignment member 5c cannot be used to align the power mechanism 7 relative to the vehicle door panel 5. This argument is not persuasive because the power mechanism 7, as shown in figure 5, includes the elastic member 21. Therefore, the position of the power mechanism 7 is determined ("aligned") relative to the vehicle door panel 5 by the positioning of the elastic member 21 relative to the second alignment member 5c. If the power mechanism 7 were not properly aligned with the second alignment member 5c within a specified tolerance, a portion of the elastic member would not engage the vehicle door panel 5 resulting in the power mechanism being disposed at an angle relative to the vehicle door panel 5. Finally, Saito discloses the limitations of claim 42. As shown in figure 5 of Saito, the window regulator housing 8 is held in position relative to the vehicle door panel 5 via the bolts 11a and 11c before the power mechanism 7 is attached thereto. Therefore, the window regulator housing 8 is assembled to the vehicle door panel 5 and does not need to be held while the power mechanism 7 is assembled to the vehicle door panel 5. The Appellant's argument that both the window regulator housing 8 and the power mechanism 7 both be held is mere supposition and, more importantly, contradicts the invention as shown in figure 5.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

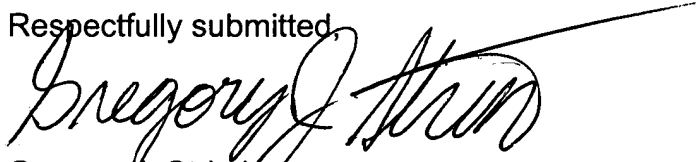
(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

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Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,



Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
May 1, 2006

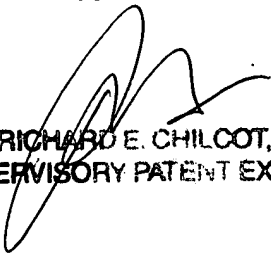
**A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:**

Conferees:

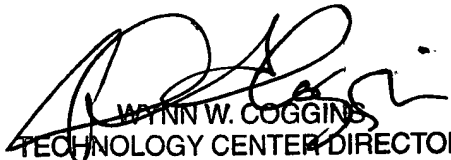
Peter Cuomo



Richard Chilcot



RICHARD E. CHILCOT, JR.  
SUPERVISORY PATENT EXAMINER



WYNNE W. COGGINS  
TECHNOLOGY CENTER DIRECTOR